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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 17 AUGUST, 2012

AT 1.57PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR STRICKLAND: I'll just show you what I was showing you before lunch, what you said you said in the compulsory examination on 31 May, 2012, you were asked, "Who said that?" Have you got that at the bottom of page 1724? Are you with me Mr Nguyen? Mr Nguyen, do you have 1724?---Wait, I'm trying to find that. The very last paragraph.

10 Just the last line of that page, "Who said that?" Do you have that or not?
---No, I don't.

THE COMMISSIONER: The last line is, "He said that to you?" Sorry, that's the last question.

MR STRICKLAND: Well my copy is different as is not, as is - - -?---Yes, I've found that.

Okay.

20

MR LLOYD: What question, Phil?

MR STRICKLAND: It's okay. I think there's kind of multiple copies of different, the copy that I've been reading off is different from what everyone else has got. Okay, the top of - - -

THE COMMISSIONER: Can you take Ms Lonergan's?

30 MR STRICKLAND: I've taken it, yes. So top of page 1724, "Who said that?" "I said, you know the quote that, the quote that, 'cause I've been thinking back to when, when you guys showed me the schedule and I still had the question over my head at the time whether that was the whole tender schedule or was it the component that we had asked for." Do you see that?
---Yes.

THE COMMISSIONER: Have you read that?---Yes, I have.

40 Is it the case that when Mr Diekman sent you the actual – when he sent Mr Ashworth the actual quote that at that point in time you were not sure whether he sent you the whole tender schedule or a component of it?---I guess, yeah, I wasn't, I wasn't actually sure.

Okay. Thank you.

Well that's what your answer says. And that's correct is it?---Yes, that's right.

MR STRICKLAND: I take it that you knew at the time of this conversation.

THE COMMISSIONER: Which conversation?

MR STRICKLAND: I'm sorry, I beg your pardon. Thank you.

10 At the time of the conversation when Mr Diekman came to your factory this year you knew that he was very concerned about the quotation that he had sent you in relation to Sydney Ports, is that right?---Yes.

And did you understand that his concern was because - well did you share that concern?---Yes.

If you just go to page 1720. See you've - this, this conversation you had this year was in the car park, is that right - - -?---Yes.

20 - - - of your factory? And at 1720 line 29 he says, "Sorry", he asked you to put your phone down and you said yes, he did, yes?---Yes.

What did he mean put your phone down?---'Cause - as I can recall I pulled up in the car park, he walked up and - - -

Sorry, you're too soft?---He - my normal thing is when you turn off the engine you pick up your phone and you, and you step out of the car. I think Charlie, Charlie came up to the car as I can recall and said put your phone down as in, as in don't pick your phone up.

30 He was - I understand, okay.

THE COMMISSIONER: Can you hear Mr Naylor?

MR NAYLOR: Pardon?

THE COMMISSIONER: Can you hear?

MR NAYLOR: Yes, I can, Commissioner.

40 MR STRICKLAND: Is it the case, I'm now going back to the conversation you had, you've had with Mr Diekman around about the time he sent that email to Mr Ashworth, is it the case that you had a conversation the gist of which, that is the guts of which was that you said to him if I get the job you, Kings can do the gates for us?---I may have - I must have had that conversation if he sent me a, a, a price. I don't specifically recall but I would imagine he would be sending us a price without us making some kind of request for that.

I seek a variation of the suppression order in relation to pages 1740 and 1741.

THE COMMISSIONER: Yes. The suppression order on those pages is vacated.

THE SUPPRESSION ORDER ON PAGES 1740 AND 1741 OF MR NGUYEN'S COMPULSORY EXAMINATION ARE VACATED

10

MR STRICKLAND: Now if you go to page 1740, you were asked this question in the compulsory examination at line 41, "Was there any conversation you could recall between the two of you about his bid or your bid during the tender process", and you're being asked about reports.

THE COMMISSIONER: Which tender process is this?

20 MR STRICKLAND: Well it's the - from the previous questions relates to the Sydney Ports tender process.

Then you gave an answer and then at 1741 you said - - -

THE COMMISSIONER: Turn over the page.

30 MR STRICKLAND: Turn over the page, thank you. "Well, what did you say? What price are you going to offer", and you said this, "No, I don't think I would have been that indiscreet, I probably would have said you know normal questions I would ask Charlie and any other people." Excuse me, sorry, Commissioner, I'm bedevilled by the fact that my, I'm sorry, I beg your pardon. I'm sorry, Mr Nguyen, I've got a different copy of your transcript. Go back to page 1740, the first page, I'm sorry. Line 4 of 1740, "Did you have any discussion with Mr Diekman about your bid or, or Kings' bid during the tender process?" "Yeah, we tried, we generally when a tender is on competitors tend to try and poke each other for, for information and I would you know, tried to gauge whether - - -". And then forget the next question and answer, the next question after that is, "Who's saying this?" And then you said, "Me, me and me, me and Charlie, we kind of agreed between - I remember having a conversation with him where
40 we've actually both said look, civil works, electronic security, it's, it's not - you know, why, why is together in one job and, and yeah," then is, this is the line I want to ask you about, "The gist of the conversation was that if I get the job can you do the gates for us." Do you see that?---Yes.

That was your evidence then about the actual conversation?---Yeah.

Was that true that evidence?---That was to the best of my recollection true, yes.

Thank you?---I don't - - -

Thank you. I tender the, I tender pages 17, I'm sorry, Commissioner. The previous pages, I'm not going to rely on copy, I tender all the pages that I have sought a variation of the suppression order. I think it's 1720 to 1730 and 1740 to 1741.

10 THE COMMISSIONER: Well, pages 1720 to 1730 of Mr Nguyen's compulsory examination transcript of 31 May, 2012 is Exhibit 209 and pages 1740 and 1741 of that transcript is Exhibit 209.

#EXHIBIT 209 - PAGES 1720PT-1730PT OF THE TRANSCRIPT FROM MR NGUYEN'S COMPULSORY EXAMINATION ON 31 MAY 2012

20 MR STRICKLAND: I tender sorry, I beg you pardon.

THE COMMISSIONER: Sorry, I'm not sure I've got that right.

MR STRICKLAND: I'm sorry.

THE COMMISSIONER: Yes, I have, I have, yes. Yes. The first one is 209 and the second one is 210, in other words pages 1740 and 1721 is 210.

30 **#EXHIBIT 210 - PAGES 1740PT -1741PT OF THE TRANSCRIPT FROM MR NGUYEN'S COMPULSORY EXAMINATION ON 31/5/2012**

THE COMMISSIONER: Yes.

MR STRICKLAND: I tender an email or an email chain containing an invoice from Mr Nguyen dated 14 June, 2009.

40 THE COMMISSIONER: Are all the emails dated 14 June?

MR STRICKLAND: No, that's the last of the emails.

THE COMMISSIONER: Right. Exhibit 211 is a chain of emails, the last of which is from Mr Nguyen to Mr Kem - - -

MR STRICKLAND: I'm going to ask that question, I don't know.

THE COMMISSIONER: K-e-m.

MR STRICKLAND: Yes.

To M Kem, M, K-e-m, of 14 June 2009 with a tax invoice from SCI dated 5 February, 2009 attached.

#EXHIBIT 211 - EMAIL STREAM ENDING WITH EMAIL FROM MR NGUYEN TO MR KEM SENT ON 14 JUNE 2009 AT 19:46

10

MR STRICKLAND: Thank you.

Do you recall, Mr Nguyen, if you go to the tax invoice 50209, do you recall receiving a tax invoice from Daniel Paul, the description of which was airfares and accommodation for PT?---Yes.

And who's PT?---I believe that was Paul Teasdale.

20 And who did he work for?---GPT.

Right. And you paid for his airfare accommodation in relation to the IOC contracts, is that correct?---I must have if it's, if it's on the tax invoice.

And why did you do that?---I received an invoice and I was asked to sponsor a client to go to, to Vegas to the trade show.

For the what?---Trade show.

30 Right. And you did?---Yes, I did.

Well why did you do that?---I suppose I wanted to be on the bus with Daniel because he gave us exposure to the suppliers and the manufacturers who were also there. There was one, there was only one group that I knew of going to see the poker factory every year for the, for the trade show. And basically you had to be on the bus if you wanted to, to be invited.

40 THE COMMISSIONER: What do you mean on the bus? You mean at the trade show with them?---Daniel organised like a, like an Australian contingent, like a - - -

That went on a bus?---Yeah, that's right, yeah.

MR STRICKLAND: But you mean on the bus both literally being on the bus - - -?---Literally, yeah.

- - - but also figuratively. Is that right?---Yeah, yeah. That's right.

That is you had to be part of the crowd?---You've got to be on the crowd too, yeah.

And was Mr Paul the driver of the bus?---Yes.

So you're saying that unless you were on the bus literally and figuratively then you were not going to get any favours or assistance by Mr Paul. Is that what you're saying?

10 THE COMMISSIONER: Or there was a possibility of that?---When you say favours are you talking about awarding jobs or - - -

MR STRICKLAND: I beg your pardon?---Are you saying favours as in winning jobs or favours as in going easy on you if you're, if you're getting witness tested or - - -

20 THE COMMISSIONER: Either or, either or?---We certainly, we certainly understood that if you were on the bus you had exposure to him and you would want to make yourself friendly with the consultant. But, but there was no, there was no promise to win or work or, or anything on the back of that. In fact most of us who were on the bus never really won any work off Daniel.

What about witness testing?---Yes, of course, obviously if you were friendly with the consultant on the witness testing, because it's, it's all very subjective and discretionary on the consultant, on the consultant side, you know, it was obvious that we were trying to, to make him go like, you know - - -

30 Please him?---Please him, yes that's correct.

MR STRICKLAND: I tender another set of emails pages, they're pages 304 to 395, an email chain from Michael Julian to Jonathan Nguyen, the last of which is dated 18 June, 2009.

THE COMMISSIONER: The chain of emails the last of which being from Michael Julian to Mr Nguyen of 18 June, 2009 is Exhibit 212.

40 **#EXHIBIT 212 - EMAIL STREAM ENDING WITH EMAIL FROM MR JULIAN TO MR NGUYEN DATED 18 JUNE 2009 RE ISC WEST**

MR STRICKLAND: If you go please to page 388. Do you have that page, Mr Nguyen? Do you have that page?---Yes, yes.

Would you go to the bottom of that page it says on 14 June, 2009 at 7.45pm Jonathan Nguyen wrote – do you see that?---Yes.

And what you've done there is you have forwarded on an email chain from Mr Paul to Mr Hingerty, copy you relating to the itinerary and costs for ISC week. Do you see that?---Yes.

And that's the same document I showed you before lunch?---Yes.

And you, you sent that to Mr Julian because you wanted to show him that chain of emails. Correct?---Yes. He asked for it.

10

He asked for it. Okay. And then if you please to page 387, I'm sorry, he's replied to you saying, this is at, sorry, at page 388 he has replied to your email five minutes later saying, "Well organised." Do you see that?---Yes.

And then if you go to 387 you have replied back to him again, Mr Julian at 7.57pm. Do you see that?---Yes.

You said, "If you want to win tenders you need to be on that bus." Do you see that?---Yes, yes.

20

Not witness testing tenders?---Ah hmm, ah hmm. Yes.

Did you mean what you said when you wrote that sentence?---I probably did. It was a personal opinion but you know I, I was obviously venting at Daniel.

30

So when the Commissioner asked you - when you gave your evidence about assistance or favours by Mr Paul and you said witness testing or assisting to get jobs and you said it was witness testing. In fact the email you wrote back in June 2009 was if you want to win tenders you need to be on that bus, correct?---Mmm.

And that's, that's the bus that you have just been giving evidence about - - - ?---Yes.

- - - isn't it? The same bus?---Yes, that's correct, yeah. You need to take that email into context but I, I was venting about Daniel and as contractors we always bitch about consultants it's not just Daniel.

40

Well what - well that's why I asked you. Was that a genuine sentiment you had at the time you wrote this email - - -?---It was a sentiment, I can't say I can back that up with facts though.

I see. Well you go on, when you say you can't back it up with facts you go onto outline a number of events and circumstances - - -?---Ah hmm.

- - - in support of that proposition don't you?---Yes, I do. But once again they're, they're - they have to be read in the context of a pissed off contractor bitching about a consultant.

Okay. But is the content of that email true or not?---In my - to my - personally from my perspective, yes, I would say if you ask Daniel if he would, he would obviously disagree or if you ask someone else they would have a different perspective but I, I honestly felt that by not being one of us by choosing to not go on that bus that, that we were at a disadvantage and that was the, the gist of, of, of that email.

Just if I can go to New South Wales - in relation to that email under the heading 'New South Wales Art Gallery' you, you've written "(not transcribable) originally (not transcribable) tender removed from the list on a technicality recommended by Dan." What were you referring to there? --Originally when the Art Gallery tender came out we received a, an invite to, to tender. Now this was happening at the same time that we had stopped working with Daniel and, and once again this is, this is purely you know subjective and should be read in that context but you know when we stopped working with Daniel we found ourselves not invited to, to tender at the Art Gallery so I, I - you know once again I was venting but in my opinion I thought that that there was a connection, I, I can't support that with fact but it was you know, this is an email trail, a personal email offline conversation between myself and Michael Julian, I, I yeah, it should be read in that context.

Under the heading 'Colonial First State' it says, "Originally verbally invited (not transcribable) formally invited for tender." I showed you the email today where it seems you were invited to tender?---Yes, that's right. And I, I freely admit that I was, I was incorrect in saying that, that we weren't invited because I didn't recall that and I always assumed that the (not transcribable) Centre which we, we - I don't know that we actually bid for but we definitely didn't get the job, I always thought that was a Lend Lease site. There may have been a joint venture thing (not transcribable) in these shopping centres have co-ownership and it's hard to tell who actually owns it.

Just go to page 384 the first email of that chain. On 18 June 2009 Jonathon Nguyen wrote and then you've referred to it "Gosford City Council long story. Years ago Orion, Austek were the service providers for the Ettalong Beach Memorial Club, we fixed up", I think that should be Chubb, is that right - - -?---Yeah, that's right, yeah.

- - - "security fuck up and got in". When they came to tender the Ettalong (not transcribable) CCTV system you recommended DP by mistake.

THE COMMISSIONER: Big mistake.

MR STRICKLAND: I beg your pardon. Big mistake. Then it says, "(not transcribable) to win the job as usual gets his income from kickbacks." Do you see that?---Yes.

What was the basis of you stating that as usual - what was the basis of that statement?---Once again venting. I couldn't support it with fact but I, I always suspected that there was something with ECS winning the Gosford job that - - -

10 It's a pretty, it's a pretty strong statement to make without, without - - -?---I was really pissed off.

Just let me finish the question, without supporting, without having any facts to support it isn't it?---It was a personal conversation between myself and Michael Julian.

Can you answer my question. It's a pretty strong statement to make, isn't it - - -?---Yes.

20 - - - without having any facts to support it, isn't it?---When you're having an offline personal conversation - - -

Can you answer that question or not?---It is a very strong statement, yes.

30 Did you ever pay - what did you understand by the term "kickbacks"?---A kickback could be anything, any way that the consultant can, can make money out of, out of a job. I'm not necessarily saying there's a, there was a bribe to, to win the job but, you know, you've, you've got to remember that, that, you know, consultants are businesses and they have to make revenue somehow and whether it's through witness testing or, or whatever that's, that's how they operate.

Can you, can you answer my question. What do you understand by the word "kickback"?---Is, is money that goes in the, back in the, in the direction of the consultant, kicking back the money to the consultant.

It's a bribe isn't it, that's what a kickback means?---Ah - - -

40 It's a corrupt payment isn't it?---I don't know the technical definition of, of - - -

No, what you understood the word meant when you wrote this email?---I, I see kickback, extortion, witness testing, defects, as a contractor they all belong to the same thing.

You're saying you have no information to support that sentence, is that what you're saying?---I had a suspicion but no facts.

I have no further questions and I can indicate to my friend Mr Lloyd that I won't be making any submissions in relation to that particular sentence in his email, that, given, given that evidence to save some time I couldn't make any submissions and I won't be in relation to that sentence.

THE COMMISSIONER: Yes, Mr Lloyd.

MR LLOYD: Nothing.

10 THE COMMISSIONER: Mr Naylor?

MR NAYLOR: No, Commissioner.

THE COMMISSIONER: Anyone else with questions for Mr Nguyen?

MS HUGHES: Commissioner, I just have two small questions.

THE COMMISSIONER: Yes.

20 MS HUGHES: Which should elicit one line answers.

THE COMMISSIONER: I beg your pardon?

MS HUGHES: They should be able to elicit a one word answer.

How many public jobs have you tendered for where Daniel Paul was the consultant?---From memory seven, between seven and 10.

30 And how many of those jobs were you the successful tenderer?---I can't recall a single job that we won.

THE COMMISSIONER: Sorry?---Zero to my, to the best of my memory, zero.

None?---None.

MS HUGHES: Thank you, Commissioner. I have nothing further.

40 THE COMMISSIONER: Yes, thank you, Mr Nguyen, you are discharged from the summons and free to go.

THE WITNESS EXCUSED

[2.23pm]

MR STRICKLAND: I call Mr Charles Diekman.

THE COMMISSIONER: Mr Diekman.

MR DIEKMAN: Commissioner.

THE COMMISSIONER: You will recall that I made that section 38 order -
- -

MR DIEKMAN: Yes.

10 THE COMMISSIONER: - - - protecting you?

MR DIEKMAN: Yes.

THE COMMISSIONER: I make it again.

#SECTION 38 ORDER IS MADE

20 THE COMMISSIONER: I don't need to explain it to you, you understand
what it means?

MR DIEKMAN: Yes.

THE COMMISSIONER: Did you give your evidence under oath or did you
affirm the truth of your evidence?

MR DIEKMAN: Under oath.

30 THE COMMISSIONER: Well, I think it would be preferable if you're
sworn in again. Would you administer the oath.

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: Just bear with us for one moment, please.

10 Could the witness please be shown Exhibit 1, tab 40. This is, I've asked
you about this particular document before, this relates to an alarm system
that you arranged for Kings to install in the cousin of Mr Robert Huskic. I
want to suggest to you that you made that arrangement in order to keep in
Mr Huskic's good books to ensure that he would do favours for Kings in
the future. Do you agree or disagree?---Yes.

Thank you?---Can I expand on the favours?

20 Yes?---During our work with Bill and Mary (not transcribable) over seven
years, I think 2005 we started, we were constantly chasing money from
them. They were constantly three sometimes six, sometimes one year out
from payment. We would constantly call the accounts department and we
were always given the run around. They would never return the calls and it
was so important for me to have a close relationship with Robert and even
Cameron because they were the only ones who seemed to be able to get
accounts paid. So it was very, very important for me. As I said at some
stage it was half a million dollars and sometimes it was over a year and it
was a total debacle. The whole procurement in Northern Area Health was
disastrous.

30 Okay. Mr Diekman, I should say to you that what I propose to do in
relation to some matters you've already been questioned about is to ask you
some questions out of fairness, it's called procedural fairness and to put to
you various matters that may later be made the subject of submissions. For
you to, so you can be given an opportunity to provide an answer. Do you
understand that?---No.

40 Well I'll try it again. What I'm -- one of the reasons you are being called
back is so that some questions can be put to you about allegations so that
you will have an opportunity to respond to them. So if, so if a submission is
put that you are, for example, you have made a corrupt payment, for
example, if that's, if that's a matter that might be put against you, you have
an opportunity to respond to that particular allegation. Do you understand
that?---Yes.

So some of the questions I may say do you agree with that or not and you
may choose to answer yes I do or no I don't or I don't recall.

I asked you some questions before about a payment, a cash payment you
made to Mr Huskic - - -?---Yes.

- - - on 1 June, 2007?---I can't recall the dates.

Okay. I understand that. And just to refresh your memory about the dates I just want to show you, if the witness just could be given Exhibit 1, tabs 36 to 38. Now Mr Diekman, these are bank records and I showed you this when you were on the first occasion?---Yes.

10 When, this is just to refresh your memory - - -?---Yes.

- - - on the 1st, you received a call from Mr Huskic - - -?---Yes.

- - - at about 2 o'clock in the afternoon on 1 June. You then withdraw \$10,000 in \$50 notes?---Yes.

And there was a bank record of Mr Huskic depositing - - -?---Yes.

- - - at St Leonards - - -?---Yes.

20 - - - nine and a half thousand dollars cash?---Yes.

All right. I want to suggest that you paid Mr Huskic \$10,000 cash on that day. Do you agree or disagree or do you not remember?---I don't recall it and in my previous evidence I don't recall, however, from reading the transcripts of Mr Huskic's evidence and the investigation that was put on him which – it has brought to light that I lent him some money which I had forgotten and so thanks (not transcribable) because now I'll be able to collect my \$10,000 because I – it had gone over my head.

30 But to, to this day you don't have a recollection of lending him \$10,000 on that day did you?---I don't remember any - I don't really have a recollection of it, no.

I want to put to you that that money, that \$10,000 cash a bribe that you gave to him. Do you agree or disagree with that?---I disagree with that.

And it was a bribe for favours that he had given you or favours that you hoped he would give you in the future?---I disagree with that.

40 I also asked you and I'll show you the records if you wish - - -?---No, no.

- - - to be reminded of them. If, if you I'm very happy to show them to you. You also paid - do you recall I asked you questions about two and a half - - - ?---Yes.

- - - thousand dollars cash?---Yes.

I'm sorry, two and a half thousand dollars - - -?---Yes.

- - - on 27 July 2007 and two and a half thousand dollars on 9 August 2007?---Yes.

And I want to suggest those two payments were bribes?---Absolutely not.

For either favours he had given you or favours - - -?---No.

10 - - - that you hoped he would give you in the future? Okay. Do you remember I asked you about in September 2008 Mr McMicking arranged to install a security window grills - - -?---Yes.

- - - in Mr Huskic's home?---Yes.

And I want to suggest to you that that was done - that was arranged by you to keep in Mr Huskic's good books to carry favour with him. Do you agree or disagree with that?---No, I disagree with that.

20 THE COMMISSIONER: Did you arrange for that to be done?---I didn't arrange for it to be done, no.

MR STRICKLAND: Did you know that it was being done?---Not until this Commission have done their investigation. I may have - someone might have said something but I had no recollection of it.

You remember you gave evidence about - I withdraw that. Do you remember there was evidence of Mr Huskic being provided a Vespa motor scooter in 2009?---Yes.

30 I want to suggest that that was also a bribe - - -?---No.

- - - you gave him for favours you'd - he'd either provided you or favours you hoped he would give you in the future?---Absolutely not.

And I want to suggest that you evidence that Mr Huskic in affect paid for that scooter by cleaning or maintaining your boat was a lie?---No, it was not.

40 Do you remember you gave some evidence - I withdraw that question. I want to ask you about a number of items that Mr Huskic was provided in 2010 being an iPad, a mobile phone, a PlayStation and external hard drive. I want to suggest to you that Mr McMicking gave you a list of those items or told you about those items and you, and you told him to go and give those to Mr Huskic?---I may have I, I just don't have a recollection of it. I, I definitely didn't go and buy any items.

No. And there is no suggestion that you personally bought the items?
---Yes.

What I'm suggesting you is that you approved - - -?---I may have.

Or authorised Mr McMicking to buy those items as a gift for - - -?---Not, not as a gift, no.

Mr Huskic - - -?---Well I don't, I don't recall but it would not have been as a gift, no.

10 And I want to suggest that that, that the provision of those items was a bribe by you to Mr Huskic?---No.

For favours that he'd given you or favours you hope to get in the future. Do you agree or disagree with that?---I disagree with that.

Now do you recall, do you agree a Gosford car park job that Kings was involved in?---Only from reading the transcripts or being from here. I had nothing to do with that job.

20 Well, isn't it the case that you asked Mr McMicking to send in a quote on MJH Securities letterhead?---Not, not that I can recall.

Excuse me.

Could the witness please be shown Exhibit 145B.

Now, there are two parts to this exhibit, Amanda, I wonder if you might help him. The second part is Exhibit 145B and I want you to go please to that part and to go to tab 24. No, that's not right.

30

MR NAYLOR: Pardon me, Commissioner.

MR STRICKLAND: Excuse me, Commissioner, I just - - -

THE COMMISSIONER: Exhibit 145A has a number of tabs, Exhibit 145B has none.

MR STRICKLAND: Has no tabs?

40 THE COMMISSIONER: No.

MR STRICKLAND: I see. Will you just bear with me, please. It's page, it's page 45 of 145B. Now, that should be an email from you to Mr McMicking dated 4 May, 2010. Do you have that?---Yes.

And the title of it is "No subject"?---Yes.

And there's an attachment, you can see on the actual email it's got attachment MJH175liverpool.doc?---Yeah.

And if you go over the page, it should be page 25, do you see a quotation MJH Security Installations - - -?---Yes.

- - - attention Andrew Denton-Burke, Jones Lang LaSalle?---Yeah, yes.

10 Why did you send that email to Mr McMicking on that date?---Would you like me to speculate or - - -

No. Do you, do you know?---Well, I can assume that Mr Huskic asked for another quote and didn't have the time to get someone else to quote it and he asked if we could provide another quote and - - -

THE COMMISSIONER: On somebody else's letterhead?---Yes.

But that was dishonest wasn't it?---Well, the clients asked for it and I - - -

20 But it's dishonest?---And when I, David was - - -

You're, you're representing that the quote comes from the, the company whose letterhead it is whereas the quote is in fact coming from you?---Well, I believe Mr Hingerty knew about it.

MR STRICKLAND: That's - - -

30 THE COMMISSIONER: So he was using it to mislead somebody else was he?---No, we're not trying to mislead anyone.

So why was it necessary to have a quote prepared by you on MJH letterhead?---Mr Huskic wanted a third quote and he didn't have the time to get it from anyone or he couldn't get anyone - - -

Why do you think that he needed a third quote?---To get it through his system.

40 So he was trying to mislead somebody in his system?---He may have been, I, I don't know, you'd have to ask him.

Is there any other possibility?---Or he's too lazy to go and get it himself.

MR STRICKLAND: Mr Diekman, if you authorised Mr McMicking to provide a third quotation on another company's - - -?---Yes.

- - - letterhead - - -?---Ah hmm.

- - - you knew that you were being party to some dishonest act, didn't you?

---I'm not being dishonest at all.

Listen to the question, you were being party to a dishonest act and you knew that didn't you?---No.

Well, if - you say the client asked for it, correct?---Yes.

The client is in fact an Area Health Service, isn't it, it's an entity, a government body, isn't it?---It is an entity - - -

10

Yes?--- - - - and the information would have been we can get Mick Hingerty to give you a price, okay, so that's what we did.

All right. Well, then why not ask, why not - you would have thought if they genuinely wanted a third quote which was a genuine third quote - - -?---Yes.

- - - that Mr Huskic could have asked Mr Hingerty himself to provide the quote?---Well, why didn't he? You should be asking him, not me.

20

No, no, you, because you facilitated the provision of a bogus quote, didn't you?---I - - -

Did you or did you not?--- - - - did what I was requested to do.

Well, if you were requested to steal money would you do it because you were requested to do it?---No, I wouldn't.

So the fact that the client asks you to do something, if the client asks you to do something dishonest - - -?---Mr Strickland, you're just going over the same thing, we've been through this.

30

But not this particular document, Mr Diekman - - -?---Okay.

- - - and I intend to ask you some questions about it?---Yes, keep going.

Do you agree that you were a party to a dishonest act?---No.

I see. Because you say it's not dishonest, do you, to provide a bogus quotation to a client?---I was doing what I was instructed.

40

I see. And you knew didn't you that by doing what you were instructed to do by Mr Huskic that that would improve the chances of Kings getting the job in relation to the Gosford car park. You knew that didn't you?---I was hoping I suppose, yes.

But you knew that that would improve your chances didn't you?---I would hope so, yes.

THE COMMISSIONER: But the MJH quote that you prepared was higher than your quote?---I was doing what I was instructed - - -

No, just answer the question?---Yes it was, yes.

So therefore you were representing that your quote was lower than another company's legitimate quote?---That's correct.

10 MR STRICKLAND: Knowing that it was not a legitimate quote?---It was a legitimate quote, he could have still got the job.

Are you seriously saying - - -?---Yes, I'm serious Mr Strickland. I'm serious.

Listen to the question Mr Diekman because I hadn't finished it. Are you seriously saying that the quote that Mr Hingerty, that Mr McMicking sent on MJH's letterhead was a legitimate quote?---I did want I was instructed. Who know what - - -

20 THE COMMISSIONER: Just answer the question?---Who knows what Northern Area Health are going to do with the quotes.

MR STRICKLAND: You knew it was not a legitimate quote didn't you? ---I knew it was not a legitimate quote.

So you had a corrupt relationship with Mr Huskic?---I did not Mr Strickland. I did not Mr Strickland. And you keep asking me the same questions. Stop wasting the taxpayer's money. This is - - -

30 THE COMMISSIONER: Mr Diekman - - -?---No, I'm - - -

Listen Mr Diekman, if you behave like this there are penalties that I can impose on you?---Yes, yes.

And I think that you should just take hold of yourself, take a deep breath and be calm?---I might take a pill. Is that all right?

Yes.

40 MR STRICKLAND: Now you, you arranged for Mr Creary to be provided a car in July 2008 didn't you?---No, I didn't. I arranged to sell him a car not provide him a car, sell him a car and he paid me cash. And we've been through this too.

And I want to suggest that that was a corrupt payment?---It was not a corrupt payment.

You said in your evidence that, that Mr Creary gave you \$7,000 cash didn't you?---That's what I recall.

But only \$6,000 is recorded in the, in the motor registration forms and only \$6,000 is recorded in your company account books?---I don't know what's recorded in the company accounts books and my recollection it was \$7,000.

10 How did you value the car at \$7,000?---We had quotations from the fleet wholesaler and we offered our cars out whatever the, I think it's Australian Fleet Wholesalers, whatever they offer us for the car we offer it to our staff and whoever else was interested in the cars at the wholesale price.

So that was – you were giving a favour to Mr Creary were you offering a car at wholesale price to him?---No, it is not a favour. I was selling the car at the market rate that I was, that the company was going to sell the car. There was no favour there at all.

20 Well it's a favour to give someone a car at a wholesale price rather than at a retail price isn't it?---It was not a favour, it was what I was going to sell the car for.

Can you answer that question?---Can you ask it again?

It's a favour to give someone - - -

THE COMMISSIONER: Mr Strickland, that's a matter of argument?
---Yeah, we've been over this, Mr Strickland.

30 MR STRICKLAND: You arranged for Mr Creary to be given a plasma TV and speakers in June 2009 didn't you?---No, I, I did not.

I suggest that they were gifts. Do you agree with that?---I do not agree with it and I did not arrange, sorry, I arranged the delivery and he paid for the TV.

See the provision of the TV and the speakers was a bribe to Mr Creary for favours that he had given you or favours that you hoped to - - -?---Mr Strickland, you keep going on about this. I mean - - -

40 THE COMMISSIONER: He's obliged to do it, just to give you the opportunity - - -?---We've been over it and over it.

I'm just saying, all right. Just say no. Your answer is no is it?---Thank you, thank you, Commissioner, no.

MR STRICKLAND: Do you remember ever speaking to Mr Steve Young of Boss?---I didn't recall it until these transcripts have come up or some evidence came up, yes.

And did you ask him to, to collude with you - - -?---No.

- - - regarding any work?---No, I, no, I did not.

You deny his, his allegation - just listen, Mr Diekman. You will let me finish my questions. Do you understand that?---Yes.

10 Do you deny the conversations that he alleges he had with you?---Yes.

Thank you. Did you pay or arrange for the payment of cash to Mr La Greca?---No, I did not.

You withdrew - your bank records indicate that on 30 May 2008 you withdrew seven and a half thousand dollars and it's - and there's a notation on your bank records saying IPP. Do you recall that evidence?---I recall seeing, yes.

20 Right. Was that payment - did, did you pay that money to Mr La Greca as a bribe?---No, I did not.

Thank you.---This is Groundhog Day.

I want to show Exhibit 57, please. I want to ask you some questions about some work that Kings did for the University of Western Sydney after the Kings was awarded the large contract to install security equipment across all their campuses. Do you understand that?---Yes.

30 Now I want to take you please to page - sorry page 812 which is the first page of Exhibit 57. Do you see that?---Yes.

And there's an email from Daniel Paul to Mr Meyers to which you were copied into. Do you see that?---Yes, yes.

40 And it's - and I'll, I will - as I have not asked you about this I will take you through it. "As the consultant for University of Western Sydney I've been asked to source the purchase price for the additional stock required to complete the project. As you know the original stock was purchased directly by UWS from Security Merchants." Then a minute later Mr Paul wrote an email to Mr Meyers again copied to you saying, "Please speak with Charlie prior to responding." Do you see that?---Yes.

Do you recall any, do you recall any conversation with Mr Meyers or someone else from CSD in relation to purchase prices for additional stock required to complete the UWS project?---I don't recall a - I'm not saying I didn't but I don't recall the conversation.

Okay. The witness, please could be shown Exhibit 59. And, I'm sorry, and 60. I'd just like you to look at the email exchange on - - -?---Yes.

- - - on 3 November. Do you recall - I'm talking about the top two emails on page 819 and 820. Do you recall that email exchange between yourself and Gary Meyers?---I, I don't recall it, no.

10 I tender a email from, I tender an email chain, the last of which is an email from Charlie Diekman to Adam Byrne dated 14 November, 2008 which contains a customer quote 43255.

THE COMMISSIONER: An email chain, the last of which is from Mr Diekman to Mr Byrne, 14 November, 2008 together with customer quote 43255 is Exhibit 213.

#EXHIBIT 213 - EMAIL STREAM ENDING WITH EMAIL FROM MR DIEKMAN TO MR BYRNE SENT ON 14 NOVEMBER 2008

20

MR STRICKLAND: Do you recall sending to Mr Paul the quotation at page 795?---No, I don't.

You have no recollection about this extra quotation for extra equipment to finish the UWS job, is that correct?---I vaguely have, recall we had to get additional equipment but I wasn't handling the job then.

And Mr McMicking was, is that correct?---Mr Roche.

30 Mr Roche?---Yeah.

I tender some bank records of, for Diekman Pty Limited between 8 July, 2008 and 7 October, 2008. Do you recognise these as bank statements for your company?---Yes, yes.

I'm sorry, Commissioner, I forgot.

THE COMMISSIONER: That's all right. Exhibit 214 - - -

40 THE WITNESS: Well, this is my personal account?

MR STRICKLAND: Just, just bear with me for a moment, sorry.

THE COMMISSIONER: Exhibit 214 is the bank statements for Diekman Pty Limited from 8 July, 2008 to 30 September, 2008.

MR STRICKLAND: And in fact, sorry, I beg your pardon. I'm sorry, also being tendered with that bundle is a bank statement of Mr Diekman and

Ms Newman's account and I would seek a suppression order on those account numbers and the address.

THE COMMISSIONER: Are you tendering another document?

MR STRICKLAND: No, I'm sorry. In the document that I've tendered there were four pages and there are in fact, I described it incorrectly as just one statement, it is in fact two separate statements, one from the business account and one for the personal account.

10

THE WITNESS: I've only got personal accounts here.

MR STRICKLAND: All right?---Oh, sorry, business as in my family trust?

I'm sorry, the Diekman Pty Limited account.

THE COMMISSIONER: I've just got to do this again, I'm sorry.

MR STRICKLAND: Sure.

20

THE COMMISSIONER: Exhibit 214 comprises two bank statements, one from Diekman Pty Limited from 8 July, 2008 to 2 October, 2008 and the second is a bank statement of Mr Diekman and his wife on 30 August, 2008 to 30 September, 2008 and the, the numbers of the account and the addresses that appear on Exhibit 214 are suppressed.

30

#EXHIBIT 214 - COMPRISES 2 BANK STATEMENTS – ONE FOR DIEKMAN PTY LTD ATF DIEKMAN FAMILY TRUST FOR PERIOD 8 JULY 2008 TO 7 OCTOBER 2008 AND THE OTHER FOR MR & MRS DIEKMAN FOR PERIOD 30 AUGUST 2008 TO 30 SEPTEMBER 2008

THE ACCOUNT NUMBERS AND ADDRESSES IN EXHIBIT 214 ARE SUPPRESSED

40

MR STRICKLAND: Could I just take you in Exhibit 214 to the second page, on 1 September, 2008?---Yes.

Internet transfer?---Yes.

UW 10K?---Mmm.

That stands for University of Western Sydney doesn't it UW?---I don't know.

And then Alt 10K?---Yes.

What does Alt stand for?---I don't know.

Well when you - - -

THE COMMISSIONER: Alt is A-l-t isn't it?---Mmm.

MR STRICKLAND: Alt, A-l-t.

10

THE COMMISSIONER: Yes.

MR STRICKLAND: When you, when you transfer money to an account you can – there's a facility to include in the internet transfer a description of the money to remind you as to what the money relates to - - -?---Yes.

- - -or what the transfer relates to?---Yes.

20 And I suggest that either you yourself typed it in or asked someone else to type that in?---It was probably me.

All right.

THE COMMISSIONER: And do you remember what it means?---No, I don't. It's my personal account, it's not a business account.

MR STRICKLAND: You're saying that Diekman Pty Limited, that's a personal account?---Yes.

30 THE COMMISSIONER: Do you know anybody whose initials are UW? ---No, I don't.

And anyone whose initials are ALT?---No, I don't.

Or any organisations having those initials?---No, I don't.

MR STRICKLAND: If you go to the next page which is – it should be the statement of your - - -

40 THE COMMISSIONER: Personal statement.

MR STRICKLAND: - - - personal account. That's your Flexi, that's your home loan account. Do you see that?---Yes.

And then you can see on 1 September it's recorded that there's a credit from the internet transfer again marked UW 10,000 ALT?---Yes.

And then on the same day there is three different – sorry, I beg your pardon, there are, there are two different withdrawals of 11,000 and then the following day a withdrawal of 10,000?---Yes.

Do you see that?---Yes.

What, what were they – why did you withdraw \$21,000 over two days?
---Maybe I was working on my house. I just, I don't recall. It was that long ago. I was working on my house around that time.

10

See September 2008 is exactly the same period when you are engaged in work for University of Western Sydney?---It's got nothing to do with UWS.

Well do you have any, do you have any explanation at all about what UW refers to?---I don't, no. Something to do with my house I would assume because it was out of my personal account.

So did you ever pay any money or any cash to anyone associated with the University of Western Sydney?---No, I did not.

20

Did you pay any money to Daniel Paul - - -?---No, I didn't.

- - - in relation to the University of Western Sydney job?---No, I didn't.

Could the witness please be shown Exhibit 45? I understand that you were not a party to this email, I just wanted to ask you about it. Were you aware of communications between Mr Paul and Kings in relation to the pricing of components for 21 additional rooms or doors at Bankstown UWS?---I can't recall anything, no.

30

Yes, thank you. Did you ever pay any cash to Mr Paul for assistance he provided in relation to you being awarded any job at the University of Western Sydney?---No, I did not.

In January 2008 you organised for a - or you arranged for a TV to be given to Mr Eschbank, is that correct?---Only from reading these transcripts. I definitely didn't arrange it.

40 Well you knew about it, didn't you?---Only from these transcripts, I remember David McMicking saying that he'd wanted to get Mr Eschbank a present for leads he'd given us over the last three or four years or prior to that. And that was all I said, that's all I heard and I had nothing else to do with it.

Well can I suggest to you that the, the TV that you, that you were aware that Mr Eschbank had been given was a bribe for assistance in securing UWS contracts?---No, that's not the case and Mr Eschbank was absolutely was assistance, he led us up the garden path.

Could the witness please be shown Exhibit 35 through to 37. Do you recall attending an ASIAL dinner paid for by Mr Paul and Mr Ciot in July 2007?
---I recall getting an invitation from Mr Ciot. Don't think it had anything to do with Daniel Paul. Well Dan and I bought a table.

I missed that?---I've got - it looks like it's an invitation from Mr Ciot and he's inviting Peter and I for - to the ASIAL Gala Dinner.

10 And do you recall speaking to anyone from Sydney Ports on that day?---I don't - I would have spoken to a lot people that night.

Is it the case that from time to time you attended dinners where clients that were you - whose contracts whose tenders you were bidding attended?
---Did you, did you, did you ever attend social functions or dinners arranged by Mr Paul or any social function whilst you were bidding for a contract and clients - and the client whose contract you were bidding for attended - - -?---
Well my, well my - nothing sticks out in my mind.

20 See the, the ISC conferences in Las Vegas were an opportunity for you to meet clients that you hoped to win contracts for?---Yes.

Do you agree that?---Yes.

Mr Commissioner, could I just ask for a one to two minute - a very short adjournment, please?

THE COMMISSIONER: Yes, very well. We'll adjourn for five minutes.

30

SHORT ADJOURNMENT

[3.04pm]

MR STRICKLAND: Thank you, Commissioner.

Just before the break you said that you denied giving any bribes to Mr Eschbank, in fact you said that you, he led you up the garden path in relation to the UWS contract. In what way did he do that?---Oh, I think I saw an email in here saying the SNP and someone else had pulled out which
40 they actually hadn't pulled out of the tender.

That's what you meant is it?---Yeah.

You don't mean at the time you believed that he led you up the garden path, you mean having looked at the documents in this inquiry you now say he led you up the garden path?---Yes.

But at the time you believed he was providing useful information to you didn't he?---No, I don't think he, no, and I don't - - -

Well, you, you acknowledged that he was giving information through Mr McMicking about the tender process don't you?---Well, nothing, nothing that would benefit us.

10 I want to ask you some questions about the Art Gallery. You gave evidence on the last occasion that you only ever received one written quote from Mr Yallouris about Endura 2, that was the quote provided to Kings on 18 February, 2009. Do you remember that evidence?---Sorry, could you repeat that?

Sure. You gave evidence on the last occasion that you only ever received one written quote from Mr Yallouris about Endura 2 and that was the written quote provided to - I'm sorry, I'll withdraw that question, I beg your pardon. You only ever received one written quote from Q Video Systems about the Endura 2 security product, didn't you?---Correct.

20 And I want to suggest to you that you did not receive any other quote in relation to that product, Endura 2, from anyone else either written or oral, do you agree with that?---Ah - - -

THE COMMISSIONER: In relation to the Art Gallery.

MR STRICKLAND: I'm talking about the Art Gallery?---I received unit rates verbally from different suppliers.

30 And you said that related to Endura 2 did you?---That's correct.

And what was, and what was the amount of the, of those oral quotes? I mean what were they roughly?---Unit rates.

Unit rates?---Yeah.

I see?---\$2,000 for that and we're going to need 50, unit rates.

40 I see. Okay. But in relation to a total quote for the Endura 2 product - I'll perhaps do it this way. Can the witness be shown Exhibit 1, tab 47. If you just to go page 555 which is the quote from Q Video Systems to you dated 18 February, 2008 and you'll see at page 556 there's a total quote at the bottom of the page being, and I'm rounding it down for \$785,000?---Yes.

Do you see that?---Yes.

What I want to suggest to you is that you only ever received that one quote in relation to the Endura 2 product in relation to the Art Gallery. You

received no other quote written or oral from anyone else in relation to a total quote for Endura 2?---In relation to a total quote that's correct.

Right. Thank you?---Before the tender.

10 Now in this hearing I read to you, perhaps I'll read you the precise quote, you gave this evidence at page 434 of the transcript, this is at line 40, I read to you some evidence you gave at a compulsory examination, that is a private hearing and this is at page 8, line 5 of that private hearing, you were asked the question at the private hearing, "In between the tender being released and the shortlisting of the tender closing and there's a bit not transcribable, you said, "I get a phone", and this is now a quote from what you actually said in the compulsory examination, "I get a phone call from Pelco saying they've just released version 2 in Hong Kong, fireworks", et cetera. That's the evidence you were being told about that answer you gave in a compulsory examination. Is it the case that you got a phone call from Mr Yallouris of Pelco saying that Pelco had just released version 2 in Hong Kong?---Whether it was Hong Kong or Shanghai, it was somewhere. It was over, it was in Asia somewhere.

20

So you actually recall that do you?---Yes.

And did Mr Yallouris tell you that Endura 2 had been released anywhere else in the world?---I didn't ask, he didn't tell me.

30 See I want to suggest that that evidence is a lie, that he told you that it had just, that Endura 2 had just been released in Hong Kong or Shanghai or somewhere else in Asia?---He said to me that he was in Asia for the version 2 release and it's fantastic, you should see it, it's unreal, you should use it at the Art Gallery, you want the job, as a salesman would do. He'd probably tell me anything. And I relayed that on to the Art Gallery in our tender meeting.

I want to - - -?---Now I'm only telling you what I was told.

And I want to suggest to you that he did not say that to you?---Well someone, why would I go and put a version 2 on if he didn't tell me?

40 Mr Yallouris did not tell you at any time before your first interview with the Art Gallery Tender Evaluation Committee on 27 February that Endura 2 had actually been released. Do you agree with that or not?---I don't agree with that, no.

So on 27 February 2009 you told - this is the evidence you've given, you told - I withdraw that. On 27 February 2009 you told the tender evaluation Committee that Kings was presenting a new solution or a new product that is different from what was contained in your original bid?---Well Verint was our original bid.

Yeah?---Yes.

But you were, what you were putting in your, in your verbal presentation at your interview - - -?---Yes.

- - - in the first interview were saying we've got a new product and we can do it for \$2 million?---That's correct.

10 But that was a lie wasn't it?---Well where's the lie in that?

Well you weren't bidding on a new product at all were you?---So, you've, you've totally lost me now.

Well you, you, your alternative bid was for Endura Version 2 wasn't it?
---Alternative bid was for - yes, that's correct.

20 So you weren't bidding for a new product at all?---Version 2 was the new product.

THE COMMISSIONER: But you bid on that already in your first tender?
---Yes, and it's a new product.

It wasn't new because you'd already bid on it?---You've lost me.

MR STRICKLAND: You told the tender evaluation committee that Endura 2 had been, just been released didn't you?---I, I may have said that and that was the information that I had been given from Terry Yallouris.

30 And I suggest that you - that that information you conveyed to the tender evaluation committee was a deliberate lie?---How can it be a deliberate lie I put down Version 2 in our tender.

Because you had never been informed by Mr Yallouris that - - -?---Well, sorry I had.

- - - Endura 2 had been released?---I had.

40 THE COMMISSIONER: When was it released?---I don't know.

That was released in April wasn't it?---I don't know. Does everyone know what the difference between Version 1.5 and 2 is? I mean because there's been a lot of talk going on here and I don't think anyone's really got their head around what it is and I'd love to explain it because I think you might, you might - - -

Mr Naylor can ask you if he wants to?---Okay.

MR STRICKLAND: You made those statements to the tender evaluation committee on 27 February because you wanted, you wanted Kings to get a second bite of the cherry didn't you? That is be able to - you wanted Kings to be given a second bite of the cherry to be able maximise your chances of winning that contract.

THE COMMISSIONER: You wanted to tender for a second time?---
You've totally lost me now.

10 MR STRICKLAND: Well you - what you said to the tender evaluation committee - - -?---Yes.

- - - was that you had a new product - - -?---Yes.

- - - for a new price - - -?---Yes.

- - - and a new product had just been released?---That's correct.

20 THE COMMISSIONER: And therefore you haven't, you hadn't bid on it before, this was new material, that justified re-opening the tender?---Well I think you're just twisting all the words there because it's - - -

I'm not?---Well I'm sorry I don't think - you're twisting the words.

Mr Diekman, you - is that not what happened?---If you go back through the tender - - -

No. I'm just asking you. Is that not what happened?---Well can you say, say it again because I'm now - - -

30 MR STRICKLAND: Well what I'm suggesting is you said those things which you've agreed that you said - - -?---Yes.

- - - in order to justify re-opening the tender?---Order to justify? I went in there with a new price in the best interests of the State Government's funds.

THE COMMISSIONER: You've been involved in Government tendering for years - - -?---They didn't have to accept it, Mr Commissioner, they did not have to accept it.

40 You've been involved in Government tendering for years?---Absolutely.

And your immediate - your response to me a second ago indicates that you're well aware that it was contrary to Government rules put a new tender to be submitted whilst the original tender was being considered together with other tenders?---I don't know the rules, okay, I, I - - -

So why did you get so upset a second ago when you said they didn't have to accept it?---Well, they didn't have to accept it. If you're saying there was something wrong with it, they didn't have to accept our, our - - -

Well, why did you think that they didn't have to accept it if it was perfectly above board?---I'm saying if there was something wrong, that I don't know about in the tender process well, you cannot submit and actually I assumed they, you cannot submit but I was given the opportunity - - -

10 Right?---I was given the opportunity - - -

I know you were?--- - - - by the Art Gallery - - -

Yes?--- - - - okay, because in our presentation I kept going on about the reduction in price from Pelco and I, I went on about how we can deliver it a lot more and I got so excited I wanted the job so I dropped the price.

20 So you told the Art Gallery that a new product had come out and because of that you were able to put in a new quote of \$2 million and there's the quote in the envelope?---I said a lot, a said a lot of things.

Did you say that?---Part, that's, I said a lot more than that.

But that's basically what you said or at least, you said at least that?---It's part, at least that, yes, and a lot more.

But, but it wasn't true?---What wasn't true?

30 That (a) it wasn't a new product and (b) it wasn't because it was a new product that you were able to reduce the price?---You've, you've lost me again. If you go through the documents we always quoted version 2.

That's why it's not a new product?---It's a brand new product.

MR STRICKLAND: The Commissioner means new in the sense of it wasn't, it wasn't a product you had not already tendered for?---Well, if they, if that's what they understood well, I'm sorry but that's the way I presented my case to them.

40 And, and the - - -?---And a new product not meaning a new tender.

THE COMMISSIONER: There was a new product?---It was a - sorry.

Yes, go on?---(No Audible Reply)

And didn't you put to them that it was a new product that had just come onto the market?---That's correct.

But it wasn't a new product, it might have just come on to the market in your opinion but it wasn't a new product that had just come onto the market because you had tendered on Pelco 2 in your original tender?---Three days before, it's the same product I'm talking about.

Yes, Mr Strickland?---I'm doing my sales pitch saying we're offering a new product.

10 Your original tender was based as primarily on first choice was the Lenel/Verint, wasn't it?---Correct.

The new tender that you were putting up was solely Pelco - - -?---No, we - - -

- - - Endura 2?---We provided an alternative bid for Pelco Endura 2.

20 Yes, but the second time around you didn't the Pelco Endura 2 was the main, was the only product in which you based the tender?---We did our presentation to them when we were shortlisted, we only gave a presentation on the Pelco product, version 2.

MR STRICKLAND: Did Mr Paul ever suggest to you before that first interview that it would be in your interests to only focus your presentation on Endura 2?---No, he did not.

Did he ever suggest to you that it would in Kings interests to tell the Tender Evaluation Committee that Endura 2 had just been released?---No, he did not.

30 THE COMMISSIONER: Did you tell the Tender Committee that it was a very surprising thing that Endura 2 had just been released?---Yes, I did.

And it was a new product?---Yes, I did.

And the information you got that it had just been released you say you got from Terry Yallouris?---Correct.

40 That's all, only, that's your only source of that information?---Well, he's the king pin, he's, he's the - - -

No, just answer the question?---Yes.

MR STRICKLAND: And when did you get that information, vis-a-vis, when did you get that information in relation to the first interview on 27 February?---Oh, look, I cannot recall the dates, I just remember a phone call.

Well, was it that day, on the same day of the interview - - -?---I, I can't - - -

The day before?---I, honestly I can't recall.

Or was it, or was it before you actually submitted your bid on 23 February?
---Honestly, I can't recall the dates, sorry.

THE COMMISSIONER: It might have been before you actually submitted your bid on 23 February?---I doubt it but I, I just can't - - -

10 MR STRICKLAND: Well, it had been given to you before on 23 February
- - -?---Yes.

- - - then you would have just bid on, on Endura 2 wouldn't you?---No.
Absolutely not, you have to put a complying bid in.

THE COMMISSIONER: Did the chair of the meeting, Ms Tregeagle say once you had submitted your bid that you – they couldn't discuss it any more because it was a new bid?---Something, something like that. I mean I can't remember her exact words that she said.

20

And as a result of your putting in this new bid on this new product which you hadn't put in before you were made a dual preferred tenderer with Mr Grubisic's company?---Correct.

And had you not been able to say that it was a brand new product that you hadn't bid on before then it would have been quite unfair to have, to Mr Grubisic to reopen the bid and allowed you to tender a price \$700,000 less than what you'd previously done?---That's, that's got nothing to do with me. I did in the best interests of winning the tender. And at the end of the day we saved the Art Gallery a substantial sum of money.

30

MR STRICKLAND: It's the case isn't I that you – I suggest to you that you have paid cash to Daniel Paul - - -?---Go on.

- - - in return for favours that he gave Kings or in return for favours you expected him to give Kings?---You've asked me that question. Do you want me to answer it again?

40 Yes, please?---And all your learned friends here with their expensive suits on are making good money out of this while you just keep going over and over.

THE COMMISSIONER: Just shut up?---Yes, Commissioner, I will?---Could you ask the question again?

I'm not joking Mr Diekman - - -?---Okay, I'm sorry, yes.

I can send you to gaol for remarks like that so just be careful. Do you understand that?---(No Audible Reply)

Just behave yourself?---Well I'm just getting sick of being asked the same question.

10 I don't care whether you're getting sick at all. If there is a problem you've got a very good barrister of experience sitting there and he can object if he thinks there's anything unfair or wrong. I haven't seen him get up yet, if he does he'll get a fair hearing. There is no call for you to be rude - - -?---Yes, Commissioner.

- - - and insulting. This is not a playground?---Yes, Commissioner.

MR STRICKLAND: I asked you, I've asked you before about a payment of \$11,000 cheque to SCI in January 2007. Do you recall that?---Yes.

20 Mr Paul gave evidence that that was for, that payment was for gambling?
---Yes.

Is that correct?---I don't recall it. I thought it was for a manual that – and I think I said in my evidence, I said I was surprised it was \$11,000 'cause I didn't really recall it.

And I suggest the evidence you gave that that money was for a manual was deliberately untrue?---Well as it turns out it was for paying off some gambling debt.

30 You accept that do you?---Well I can't recall it, but that's what he said. I actually don't remember it was that long ago.

THE COMMISSIONER: Mr Diekman, I'll just explain to you, this is not a personal attack on you?---Well I feel like it is, Commissioner.

Just, well can I just explain something to you?---I've been - - -

40 It is the task of Counsel Assisting to put the case in detail to any person against whom adverse findings can be made so that that person will understand if an adverse findings are made that he has had a fair opportunity to answer them. Now it might be really irritating to you and I understand if the questions are irritating, all I can tell you is that if you, if you don't agree with the proposition that's put to you and you simply answer no, that question will not be repeated. And I have explained to you now why this exercise is being undertaken. It's not being undertaken as a personal attack on you, it's been undertaken because it's Counsel Assisting's duty to do this. You might think that the procedure is ridiculous, that's your prerogative, but you, I can assure you that it will be much easier and go much quicker if you just answer the questions which nearly all call for an

answer yes or no by saying yes or no and then we can move on?---Yes, Commissioner. Yes, Commissioner.

MR STRICKLAND: Did you pay Dan Paul \$10,000 cash in February 2007?---Not that I recall.

Could the witness please be shown Exhibit 3, tab 2, and Exhibit 61 and 62.

THE COMMISSIONER: Did you say 61 and- - -

10

MR STRICKLAND: 62, that's right.

THE COMMISSIONER: I beg your pardon?

MR STRICKLAND: Sorry, Exhibit 61 and 62. I've asked you before about two cheques, two cash cheques from Kings, one in the sum of \$9,000 and one in the sum of \$4,000 made out to cash in January 2008. Do you recall me asking questions about those two cheques?---Vaguely.

20

Now, I have not asked you about this yet, but the evidence is that those two cheques were deposited into the account of Daniel Paul's mother-in-law, Caroline Gent. That's the evidence in this case?---Yes.

Did you pay \$13,000 in cash to Daniel Paul, or I'm sorry, or provide him with – did you pay Daniel Paul \$13,000 in cash in January 2008?---Not that I recall, no.

30

Do you have any explanation as to how those cheques were deposited into Daniel Paul's mother-in-law's account?---Well, I assume I didn't give it to his mother-in-law, I haven't met her, so I assume I gave them to Daniel Paul.

And can you give any explanation why you gave that amount of money to Daniel Paul?---Oh, I assume it was gambling, that's all.

But you have no recollection to that effect?---No recollection at all.

40

I suggest to you that that payment was a bribe for favours that Daniel Paul had given you or for favours you hoped he'd give you in the future?---No, not correct, no.

I beg your pardon?---Not correct.

I asked you before on the previous occasion about two \$10,000 cheques paid to Daniel Paul before your Las Vegas trip in 2009 which went to Mr Ciot on your evidence?---Yes.

And I suggest that that money was paid to Mr Paul as part of your attempts to ensure that he would provide favours to Kings or give assistance to Kings?---That's not correct. It was for Mr Ciot to go on a trip.

And I asked you about two further cheques after you returned from Las Vegas?---Yeah.

Two further cheques for \$10,000 each in May 2009. Do you recall that evidence?---Yes.

10

That you said was to repay gambling debts?---That's correct.

I suggest that that money was paid to Mr Paul as part of your attempts to ensure that he would- - -?---That's not correct.

- - -continue to give assistance or provide favours to Kings?---That's not correct.

Did you ever pay the full gambling debt back?---It went up and down.

20

Did you ever pay the full gambling debt that you say you lost in that Las Vegas trip back?---I probably would have but we've done more betting since so.

And can I suggest that you made attempts in relation to those two, two cheques for \$10,000 you made, you made attempts to conceal the true nature of those payments by instructing Mr Poller to, to disguise in the company books the nature of those payments. Do you agree with that? ---No, not that I recall, no.

30

Now I asked you about two Harvey Norman cheques for \$9900 and \$9800 that were provided to Mr Paul. Can you recall that?---Yes.

Can I suggest they were - that was cash paid to Mr Paul in return for favours he had given or in return for favours that you hoped - you accepted him to give you and Kings in the future?---No, that's not correct.

And that you arranged for or made attempts to disguise the true identity of those payments?---I can't recall what I did with the payments.

40

You say that that money - you have given evidence that that money was for a further gambling debt you incurred in the 2010 Las Vegas trip. Do you recall that, that evidence?---That's correct.

And you say that you- that that gambling debt was \$80,000?---That's correct.

Did you ever pay the full amount of that money back to Mr Paul?---I believe I would have.

No. Do you recall whether you did not whether you would have?---No, I don't recall.

I'm going to ask you some questions about the Gap. Do you recall Kings being involved in the Gap contract for the Woollahra Council?---Yes, I do.

10 And do you recall that during the tender process, that is before Kings had been awarded the contract for Gap Mr Daniel Paul was present in the Kings office?---I don't recall whether he - he was there a lot so I don't recall any certain time.

You had an employee called Samantha Jarvey, is that correct?---We had, yes.

And do you recall her job was to do drawings, design drawings and schematics?---Correct.

20

Do you recall in relation to the Gap contract she did drawings and or schematics concerning directional drilling?---I don't recall if there were schematics for the directional drilling she would have done them but I don't know whether there would have been schematics for that.

Well I want to suggest that you asked Ms Jarvey to look into the issue of directional drilling before - during the tender process?---I could, I could have said that.

30 When I say during the tender process I mean before you actually put in a Kings bid?---probably.

All right. At that stage, that is before Kings was awarded the contract - - -?--Mmm.

- - - you personally knew very little about directional drilling. Do you agree with that?---Correct.

40 And do you remember she printed out some Google maps?---I don't remember, no.

Could the witness please be shown Exhibit 6. I'd just like you to look please at pages 22 to 27?---Yes.

And do you see there, there are - do you describe that as schematics or drawings or diagrams, how do you term that?---It's probably a bit of a mixture.

Okay. Well I'll just call them diagrams?---Okay, diagrams, yeah.

This is the, this is part of the Kings bid - - -?---Yes.

- - - for the Gap? And you understood didn't you that the underground directional drilling component for this bid was an important part of the Kings bid?---Absolutely.

10 Because you, you hoped that it would persuade the Woollahra Council that this was an environmentally-friendly way of installing security cameras along that heritage walkway?---Correct.

And Ms Jarvey has given evidence that she, on pages 22 and following, she did those diagrams?---Yes.

Would you agree with, would you agree with that, she, that she was the author of these particular pages?---Yes.

20 Because that was part of her job?---Yes.

And I want to suggest to you that one day before this tender was actually submitted to the Woollahra Council, you had some discussions with Mr Paul about the actual run or the direction of the directional drilling as conveyed in those drawings, that is which direction should the underground drilling take place?---No, I don't recall that.

30 And I want to suggest to you that Mr Paul did some drawings or diagrams concerning that directional drilling. Do you recall that?---No, I don't recall that, no.

And then you gave those diagrams or drawings to Ms Jarvey and said something along the lines of, "These are what you need to draw." Do you recall that?---No, I don't. Where are they, what's- - -

I'm not suggesting they are part of a tender. I mean this is the evidence Ms Jarvey gave?---Yes.

That in order, that she received assistance- - -?---Yes.

40 - - -in these drawings from page 22 through to 26, she received assistance - - -?---Yes.

- - -as a result of the drawings that were given to her by you, drawings made by Mr Paul. That's her evidence?---They were in the tender documents.

THE COMMISSIONER: Is she right or not?---Ask the question again?

MR STRICKLAND: What I'm suggesting is that Mr Paul gave you some drawings or diagrams relating to directional drilling which you in turn gave to Ms Jarvey to assist her in doing these drawings that ultimately were submitted to the council.

THE COMMISSIONER: As part of the tender.

10 MR STRICKLAND: As part of the tender?---Daniel Paul never gave me drawings regarding directional drilling, absolutely not, but there were drawings in the tender, the brief that they gave us, I'm pretty sure there were some drawings in that of the locations. There was nothing about- - -

I'm talking about directional drilling drawings?---Yeah.

Did Mr Paul ever assist you in relation to that?---No, he did not, no.

20 Did Mr Paul ever – did you have any discussions with Mr Paul about camera angles, about how the cameras along that heritage waterfront should be angled?---Oh, I may have but not, not that I can recall.

You knew he was a security consultant in that, for that particular contract, didn't you?---Yes.

Did you have a – before you submitted your bid, did you have discussions with him about the specifics of your tender, that is drawings or camera angles, poles?---Camera angles didn't mater 'cause they were PanTel Zooms so it wouldn't have been camera angles.

30 THE COMMISSIONER: Or directional drilling?

MR STRICKLAND: Or directional drilling, did you have a discussion with him about those things?---Not, not that I can recall, no. He was in our office a lot so whether he saw things and there might have been some comment made across but nothing that was going to benefit us in any way.

40 THE COMMISSIONER: The short point is you say you had no discussion with him about directional drawings and he made no drawings, sorry, directional drilling, you had no discussions with him about directional drilling and he made no drawings for you concerning directional drilling? ---He definitely made no drawings, definitely not, or not that I saw, unless he gave them straight to Sam.

MR STRICKLAND: Isn't it the case that Mr Paul provided Kings some assistance in relation to the tender proposal Kings submitted to the Woollahra Council for The Gap project?---That's not the case, no.

And you – is it the case that you paid him some cash in return for that assistance?---That's not correct.

It's the case, isn't it, that Mr Paul regularly attended your offices during tender processes when he was the consultant for that project?---It was the case that he'd attend our offices a lot but it wouldn't be talking about a tender that was, we were working on, it was normally talking about a project that we are doing at the time.

But you've conceded that in those circumstances he may have made comments in relation to the tender process where he was the consultant?
10 ---He always make some comments but whether you take it on board or not, that's - - -

And what kind of comments did he make?---Well, more, more or less just different products that are out there and, and whether we're going to use it in that job or not, we were just having a discussion on technology.

Do you recall another occasion - I'll withdraw that. Do you recall an occasion when you asked Ms Jarvey to assist Daniel Paul to do, to do drawings for the Defence maintenance job at Holsworthy when Paul was a
20 consultant on that job?---Well, we weren't on the job so - - -

Do you recall - - -

THE COMMISSIONER: Is your answer no?---I remember something about he wanted some drawings done and I think I, I think I told him yeah, get Sam to do it and, and I said to Sam get paid from Dan and I think it was just one drawing, like a \$10 drawing.

MR STRICKLAND: But there was, Kings did have some involvement
30 itself with a Defence contract at Holsworthy didn't it, at that stage?---Not, not at that time, no, it's a Chubb system, we didn't tender for it, we - - -

But are you saying Kings have never done any work for any Defence maintenance work or security for Defence at Holsworthy?---I believe we're doing, did a job in the last six months but back then, absolutely not.

Excuse me, Commissioner. I tender an email from Charlie Diekman to Rod Wearing headed "2009 punters club" dated 16 December, 2008.

40 THE COMMISSIONER: Exhibit 215 is an email from Mr Diekman to Mr Wearing of 16 December, that is the last email in the chain of the emails and the chain is Exhibit 215.

**#EXHIBIT 215 - EMAIL FROM MR DIEKMAN TO MR WEARING
AND ALL STAFF AT KINGS SECURITY SENT ON 16 DECEMBER
2008 AT 16:35 RE 2009 PUNTERS CLUB**

MR STRICKLAND: Do you recall being, do you recall authoring this email?---Vaguely.

And this email you wrote Mr Wearing was in response to an email Mr Wearing sent to all staff about being interested in a punters club, correct?

---Correct.

10 And the email you sent in response to that was, contained views that you actually held at that time, is that correct?---And still do.

I beg your pardon?---And still do.

Right. You see, I want to suggest to you that the, any gambling that you may have engaged in with Mr Paul for large amounts - - -?---Yes.

- - - such as \$20,000 or \$80,000 - - -?---Yeah.

20 - - - was never intended to be serious in that it was never intended that you were to pay \$60,000 or \$80,000 you actually lost on a wager or gambling. Do you agree with that or not?---Absolutely not.

And that your evidence about gambling losses has been used as a disguise to conceal corrupt cash payments you made to Mr Paul, do you agree with that or not?---Absolutely not. I've got witnesses there watching the gambling.

Excuse me, Commissioner. Yes, they're the questions I have, thank you, Commissioner.

30 THE COMMISSIONER: Yes. Mr Lloyd, do you have any questions?

MR LLOYD: Thank you, Commissioner.

Mr Diekman, I think you understand that I appear for Mr Paul?---Yes.

Working backwards in your evidence you were asked about the Gap contract and I want to suggest to you that camera angles for the cameras that were required were clearly shown in diagrams in the tender specifications.

40 Do you recall that?---Correct.

You wanted to give an explanation on the difference between the Pelco 1.5 and the Pelco version 2?---Yes.

Could you tell us what the difference was that you wanted to explain?
---Well I've just been hearing so much backwards and forwards about 1.5 and 2.

THE COMMISSIONER: Just give us the answer?---The difference is a disc, a CD disc. One says 1.5 on it and says 2. And they're free. And that is the difference.

MR LLOYD: Now you suggested your words were being twisted about what was said in the interview with the Art Gallery. I want to take you to the sequence?---Sorry, can you just repeat that again, Mr Lloyd?

10 It was something you said, you said, you're twisting my words to the Commissioner?---Yes, yes.

Now you understand it's important when you're giving evidence looking back years ago to what was said in a meeting to be as accurate as you can. Do you understand that?---Yes.

I want to show you your bid that was put in as it would appear on the document on 23 February, '08. It's Exhibit, part of Exhibit 2, it's tab 4. And I ask if you could be shown that. And you see on the first page of that document, I hope yours are numbered in the top right hand corner. The
20 page I'm taking you to is 592?---592, the front page you mean?

The front page?---Oh yeah, sorry.

Okay. You with me?---Yep.

That's your tender response?---Yes.

And the date at the bottom is 23 February?---Yes.

30 The next page 593 is your covering letter with the response?---Yes.

Okay. And it says in the second paragraph, "Kings Security has put forth a complying tender under the Lenel/Verint specification and two other options that closely meet the specification based upon the Lenel/Pelco and then a Lenel Dedicated Micro?---Yes.

Okay. We see on the next page at 594 the logo for Endura?---Yes.

40 I take it that's Pelco Endura?---Yes.

We then go over, I'll take you through to 597 which is the schedule of pricing where you give your overall prices - - -?---Yes.

- - - for the three proposals you were putting forward?---Yes.

And we see pricing 1) for Lenel/Verint?---Yes.

About 3 million?---Yes.

Lenel/Pelco, about 2.95?---Yes.

And then Lenel Dedicated Micro?---Yes.

Going forward in the document right through to page 721?---Yes.

We see headed the Lenel Pelco Endura Solution?---Yes.

10 Lenel logo Endura logo?---Yes.

And then about seven lines down we see the Pelco Endura option for the Art Gallery of New South Wales tender is based upon the Pelco Endura Version 2?---Yes.

That was your - the product in your bid on 23 February?---Correct.

And that product that was being bided for under this solution never changed did it?---Correct.

20

And when you said on the pricing of the Lenel Pelco back near the beginning at page 597 - - -?---Ah hmm.

- - - you were referring to Lenel Pelco Endura Version 2?---Correct.

There would have been no point putting in version 1.5?---Correct.

Because it wouldn't have met the specifications?---Correct.

30 You then went to the first round of interviews?---Correct.

That was a few days later. The record shows it was on 27 February?
---Correct.

Okay. You probably don't recall the date but we have the records. Now as I understood your evidence and I was a bit confused you said that you said to the people on the tender committee we're putting forward a new product?---We said we're putting through the Pelco, our preference is the Pelco Lenel Solution.

40

Yes. And what Pelco were you referring to?---Version 2.

As I understand it you didn't say - - -

THE COMMISSIONER: Mr Lloyd, I'm not stopping you from leading the witness but I'm just telling you that leading - the leading of this evidence will have a less persuasive value on me than an open handed question.

MR LLOYD: Well the problem is - - -

THE COMMISSIONER: But that's entirely up to you.

MR LLOYD: Commissioner, the problem is you engaged in leading questions with him.

THE COMMISSIONER: Yes. But that's by - I was putting the allegations.

10 MR LLOYD: Indeed.

THE COMMISSIONER: And giving him an opportunity to respond to them.

MR LLOYD: I'll, I'll get him to say an opportunity.

I want to ask you did you say to the tender board that you were putting forward a brand new product that you hadn't bid before?---No.

20 As I understand it you've always been on the same product?---Yes.

It's a new product on the market?---Absolutely.

So if you set a new product what were you referring to?---Pelco Version 2.

Thank you. Were you ever intending to convey a meaning that you were bidding on a new product that you hadn't bid on before?---sorry, as that again?

30 Had you ever intended to convey that impression if somebody gained it? ---No. You've, you've, sorry you've lost me there.

What product were you referring to or intending to refer to in your conversations in that meeting on 27 February?---Version 2.

Thank you.

THE COMMISSIONER: There's no dispute about that.

40 MR LLOYD: Did you intend in anything you said to convey a meeting that it was a new thing that wasn't in your bid?---No, I didn't intend to, no.

I have nothing further.

THE COMMISSIONER: Mr Naylor? I better find out if there any - does anyone else want to question Mr Diekman?

MR NAYLOR: Thank you, Commissioner.

Mr Diekman, you remember giving some evidence about offering to make a contribution to travel expenses for Mr Ciot?---Yes.

And to be fair to you I'll just read out what the evidence was?---Sure.

Commissioner, at page 462.

10 THE COMMISSIONER: Yes, I don't have that, but anyway, do I need, do I need to get it?

MR NAYLOR: I can read it out, Commissioner, if that helps.

THE COMMISSIONER: Right.

20 MR NAYLOR: "One of my spontaneous moments when I was out drinking with Mr Ciot and was talking about his birthday and getting out of the industry and not going to Vegas and I said, 'Oh, bugger it', I said, 'You're coming and I'm paying for it.' And he said, 'No, no, no.' And then there was some talk about going to Africa or something, going in the next couple of days, just getting two cheques, and I said, I can recall", there's something not transcribable. "I said, 'If Michelle doesn't go, just rip one up.'"?
---That's correct.

In relation to the last part of what I've just read out to you- -?---Yes, yes.

- - -a cheque being ripped up I think- -?---Yes.

30 - - -to whom were you speaking?---Daniel Paul.

There's been – can I move on to the Art Gallery?---Yes.

There's been – the evidence is that you initially put in, and I can take you to the documents if necessary, you initially put in an alternative bid for the Lenel/Pelco system- -?---Yes.

- - -at a value of 2.69 million plus GST?---Correct.

40 Your revised bid after being invited to put it in- -?---Ah hmm.

- - -was at a value of 2 million plus GST?---Correct, correct.

And there's also evidence to the effect that the bid that was ultimately acted upon by the Art Gallery was at a value of 1.803 million?---Correct.

Can you provide an explanation- -?---Yes.

- - -for the differentials between the 2 million and the 1.8?---Yes. We, we were given a purchase order for 1.8 million from the Art Gallery and then we were given a purchase order for \$200,000 from the builder of the new warehouse facility they were building.

THE COMMISSIONER: Of the Art Gallery?---Of the Art Gallery.

So the 2 million was really split by the Art Gallery?---By, by the Art Gallery.

10

Yes?---We, we weren't aware of it until- - -

I understand that, but the, the, the bid of \$2 million-odd- - -?---Yes.

- - -was split by the Art Gallery into a bid of 1.8 million about and 200,000 about?---And that would have been a month after the (not transcribable)

Yes. There's no, there's no issue about that.

20 MR NAYLOR: Yes, thank you. Can I just go back, Mr Diekman, I'm sorry, to my earlier questions about the conversation concerning travel expenses to Mr Ciot?---Yes.

For Mr Ciot, I'm sorry. And, and I have read out what you had said. Can I just read out the relevant part again- - -?---Yes.

- - -so there's no misunderstanding?

30 MR STRICKLAND: What page is it?

MR NAYLOR: Page 462. And part of what you said was, "And then there was some talk about going to Africa or something and going in the next couple of days and getting two cheques and I said, and I can recall, I said, 'If Michelle doesn't go, just rip one up.'" And my questions to you was, to whom were you speaking in relation to ripping the cheque up?---Yes.

40 And the question – can I, can I add this other question. When you, when you referred to some talk about going to Africa, to whom were you speaking?---Well, there was talk about – we were in a pub or something and there was talk about someone going to Africa but I initially gave the money hoping that Maurice was going to come to Las Vegas.

THE COMMISSIONER: But the conversation I take it, the entire conversation was between you and Mr Paul?---No, no, Mr Ciot was there and there was- - -

He was there as well?---There was a number of people around. And, look, I only said it once, I just said, "Look, I'm paying for it", and I don't, didn't

bring it up again. I gave Daniel the money and I didn't bring it up with anyone again because I just, it was a gift and you don't go round beating your chest about giving someone a gift.

MR NAYLOR: Yes, I have no further questions, Commissioner.

THE COMMISSIONER: Mr Strickland?

MR STRICKLAND: Yes, thank you.

10

MR LLOYD: Commissioner, just with leave could I ask one question?

THE COMMISSIONER: Yes.

MR LLOYD: Just taking you back to the meeting at the Art Gallery on 27 February?---Yes.

It's the first meeting, I understand?---Yes.

20

Did you say to the committee anything about the availability of the Endura 2 product?---I don't think it was brought up, no, not that I recall.

THE COMMISSIONER: Sorry, you don't think it was brought up?---Well I don't recall it.

I'm not sure what you're saying. You're saying it wasn't brought up or it might have been brought up and you don't recall it?---Well I don't, I don't recall it being brought up, availability.

30

I'm still not sure – you see you can you say I don't recall it being brought up meaning that because I don't recall it's not likely that it was brought up or you can say I don't recall it being brought up and it could mean it might have been brought up and it might not have been brought, but I just don't know. Now which of the two is it?---I just don't know.

All right. You've finished your questioning Mr Strickland?

40

MR STRICKLAND: No. Thank you, Commissioner. Mr Paul's counsel asked you if you intended to convey to the Tender Evaluation Committee in that meeting on 27 February that the new thing or the new product - - -? ---Yes.

- - - was not in your original bid and you said no. Do you recall that? ---You've twisted the words again Mr Strickland.

THE COMMISSIONER: Well I don't know, if you keep saying that, you just please tell me what was said about the product that seems to be the topic of the conversation that I assume was Endura 2?---That's correct.

So what did you, what did you say about it?---I said version 2 is available and it's released. It's the upgraded version from 1.5 and it's the new, new Pelco system.

MR STRICKLAND: And what your evidence is that you never intended to convey that the product you were referring to, the Endura 2 product in your meeting was not something that was already in your original bid?---Sorry, it was in the original bid.

10

THE COMMISSIONER: No, you've got double negatives there.

MR STRICKLAND: Well I know but that was what the question was. But I'll put it another way. What your evidence is is that you did not intend to convey to the Tender Evaluation Committee that you were bidding on a product that you had not previously bid on?---You're losing me.

I'll try and put it again. I'll try and put another way. Your evidence was - - -?---Yeah.

20

- - - that what you were bidding on - - -?---Yes.

- - - in your Endura 2 - - -

THE COMMISSIONER: The revised bid, in the revised bid.

MR STRICKLAND: No, I'll put it again. What you were, your evidence is that in the 27 February meeting you never intended to convey to the Tender Evaluation Committee that there was anything, you were bidding on a different product from that which was contained in your tender proposal. Is that right?---No, it's not right.

30

I thought that's exactly what your evidence was as I understood it?---When, just then?

Yes?---Oh well you've twisted my words. Sorry, I'll go back through it.

Okay. Well let's try it again?---No.

40

No, I'll try it one more time?---Why don't we go back through the transcripts and have a look at it, but - - -

Mr Diekman - - -

THE COMMISSIONER: Well I think that's a very good idea.

MR STRICKLAND: Mr Diekman, let me put it this way, what you're saying is this, I'll put it, I will put it in a simpler way. You say that you originally, your original alternative bid was on Endura 2. Correct?
---Correct.

And when you spoke to the Tender Evaluation Committee you were bidding on Endura 2?---Correct.

10 And therefore there was nothing new about that?---It was new, the product was new.

There was nothing new about your bid. That's what you were saying. That's your evidence isn't it?---No, my evidence is when I gave the presentation to them that the version 2 is a new product.

Yes, but, but it's a new product which you had already bid on?---Well I don't think three days something turns old.

20 THE COMMISSIONER: Well - - -

MR STRICKLAND: Mr Commissioner, could the witness please be shown Exhibit 2, tab 5. Go to page 41, please.

THE COMMISSIONER: Well you better just get him to, to identify the document, Mr Strickland.

MR STRICKLAND: Sure. I will. It's a – this is your tender proposal interview. Do you see that?

30 THE COMMISSIONER: Well it's, it's an Art Gallery document that as sent - that was given to you as I understand it?

MR STRICKLAND: No, no, Mr Chairman, Commissioner. It's not. It's a Kings document.

MR LLOYD: The Art Gallery didn't get it.

40 THE COMMISSIONER: It's a Kings document. So, so it's your document?---Yeah.

MR STRICKLAND: And it's a document that, that you prepared for the interview on 27 February?---Yes.

And it contains various answers to questions that you were being asked to consider and articulate at the interview on 27 February?----Yes, mmm.

If you go to page 40?---Yes.

There is a section about Endura?---Yes.

And then about a third way down the page on page 40 there's key points on
- - -?---Yeah.

- - - the 2.0 system. And then on page 41 there's a record of our pricing?---
Yeah.

10 And on the second last dot point it says, "Priced using Version 1, Version 2
provides significant cost savings." Do you see that?---Yes.

And what, what you were - and what was conveyed by that was that when
you put in your proposal for the Pelco system the pricing for that, that is the
2.67 million - - -?---Ah hmm.

- - - was based upon an Endura Version 1 price, correct? That's what that
means doesn't it?---Mr Strickland, the hardware - - -

20 That's, that's what it means does it?---No, it doesn't. That's just my - that
was never given to the Art Gallery.

Forget, forget that. That's a - it's a Kings document?---Yeah, I know, yeah.

That's, that's what it meant.

THE COMMISSIONER: You were preparing for the meeting and you were
- - -?---Yes.

30 - - - setting out what you intended to tell the Art Gallery?---Yes.

MR STRICKLAND: And the next component of it is Version 2 provides a
significant cost savings?---Correct.

And what you were intending to convey with that is that the reason you
could reduce the price from 2.67 million to \$2 million was because you
were now bidding on Version 2 but your earlier bid was on Version 1.
That's what that conveys isn't it?---This is for my own notes talking about -
- -

40 THE COMMISSIONER: Why did you mention Version 1 there?---Well
just for a start the difference between Versions 1.5 - - -

Why did you put Version 1 there?---I don't know I can't - talking about the
old system to the new system but you just, just remember one thing the
difference between the two is a disc that's free.

Why was it necessary - - -?---It's s hardware.

- - - to say that Version 2 provides significant cost savings?---I was talking about the cost savings, the launch of Version 2 and Terry's come back to me and said he's going to reduce the price.

So that's the - so you're saying that the reduction in your tender price of approximately \$700,000 if I've got that right is caused by Version - the use of Version 2. Is that right?---The way I priced the job - - -

10 Can you - just answer the question, please?---Sorry. Could you ask it again, I'm sorry, Commissioner.

The importance of putting - I'm asking you whether the importance of reminding yourself in this document which you prepared that Version 2 provides significant cost savings - - -?---Yes.

- - - is that you were - you're going to use the Version 2 significant cost savings to explain the reduction from your original price of 2.7 million to 2 million?---No, that's not correct at all. I talk about the upgrade.

20 So are you saying that when you spoke to the Art Gallery people at the meeting where the - you told them that your price was now \$2 million you did not ascribe that to the new product Endura 2?---I did.

Right. So you told the Art Gallery that the price had been reduced from 2.7 to \$2 million because of significant cost savings arising out of the use of Version 2?---Out of the, out of the phone call I had with Terry Yallouris saying that, well he's going to do a much better price.

30 Yes?---Okay. I didn't bring up Version 1, Version 1.5.

I'm not asking you about that. I'm asking you whether at the meeting where you put in your tender for \$2 million and I'm just using round figures now - - -?---Yes.

- - - you ascribed the reduction in price from \$2.7 to \$2 million to your use of Version 2?---From my phone call in the meeting - - -

Yes, yes, I understand. Well, for whatever reason, I'm not- - -?---Yes, okay.

40 But that's what you said to the Art Gallery?---Oh- - -

Isn't that right?---From my recollection, I don't, I, I didn't mention the word - - -

Why are you hesitating now, because- - -?---Well, because I'm getting so confused.

Well, let me tell you, put it to you again so you're not confused, because I could see that you, when I asked you this question before you were giving me the reasons for saying this to the Art Gallery and that is that you'd spoken to Terry Yallouris a couple of days before and you – he told you that there were significant cost savings I think?---Yes, correct, yes.

That's what you were saying?---Correct.

10 And so I'm saying to you is that you told the Art Gallery at the meeting after you'd spoken to Terry Yallouris that the reason for the reduction in the price of \$2.7 million in your initial tender on Pelco- - -?---Yes.

- - -to \$2 million was the use of Endura 2?---Correct.

Thank you. Yes?.

THE WITNESS: I think I've lost it.

20 THE COMMISSIONER: Mr Lloyd, do you want to ask anything?

MR LLOYD: Yeah. You say I think you've lost me. It's important that you be accurate, sir. What did you say in the meeting- - -?---Oh, I can't, I ---

- - -about any reason for the reduction of price?---I told them that I had a phone call from Mr Yallouris in Hong Kong and he said the version 2, it's great, and just we're going to drop the price.

30 THE COMMISSIONER: And that was the cause of your reduction of price from \$2.7 million- - -?---Correct.

- - -to 2. Is that right?---That and then by that time I'm getting, my spontaneous ways, I'm getting so excited, I wanted to get the job and in the end I just came, I visualised things.

I'm, I understand that you might have had some kind of euphoric vision but - - -?---I did.

40 - - -but I'm, I'm more interested in what you actually said to the Art Gallery, that's what I'm interested in. You didn't tell the Art Gallery about your – I withdraw that. You didn't say anything to the Art Gallery about how you were feeling although you told them I think that you were surprised and excited?---Yes.

You did. Is that right?---Yes.

And, but you explained to them the reduction in the price, tender price, was because of - your reduction of the tender price from \$2.7 million to \$2 million was because you were using Endura 2?---Correct.

Thank you. Yes, Mr Strickland. Do you have any more questions?

MR STRICKLAND: Yes, I do.

THE COMMISSIONER: Yes.

10

MR STRICKLAND: This document that I've shown you, Exhibit 2, tab 5, this was brought to the meeting on 27 February, wasn't it?---I assume so. Not to give to anyone, it was just for me to - - -

THE COMMISSIONER: Was it an aidé-memoire to yourself?---Probably, yeah.

20

MR STRICKLAND: And I want to suggest to you that either at that meeting or after that meeting or sometime between 27 February and the time that you were awarded the contract, this document was provided to the Art Gallery?---I didn't provide it to them.

Well, you arranged for its provision, didn't you?---Well, not that I'm aware of, no.

The, this document was provided to the, to this Commission by the Art Gallery?---Ah hmm.

30

Do you understand that?---Yes.

It was - in other words, the Art Gallery had this document on their file? ---Oh, well, if they did it wasn't meant to be for them, that was - - -

THE COMMISSIONER: But there is nowhere else that they could have got it from- - -?---No, no.

- - -except from Kings?---Yeah.

40

MR STRICKLAND: And I want to suggest that you deliberately misled the Art Gallery by conveying to them either in the meeting or in this document that you could get a significant cost saving by using Endura 2 because your original bid was based upon Endura 1 or 1.5. Do you agree with that? ---No, my, I don't know what I agree with now. I was gathering prices from people. Now, the hardware's all the same. The storage hardware is the same between 1.5 and 2, so, anyway, look, I'm totally confused.

Well, I put it- - -

THE COMMISSIONER: He's confused. I'm not sure if this, if there's any point in putting more questions to him.

MR STRICKLAND: If the Commissioner pleases. They're my questions.

THE COMMISSIONER: Yes, thank you, Mr Diekman. You'll be relieved to hear that certainly as far as the Commission is concerned you will not be recalled. You've finished your evidence?---Thank you. Thank you, Commissioner. And sorry for my rudeness today.

10

No, I'm sorry if I spoke to you sharply, so we're all friends?---I'm sorry.

Okay.

THE WITNESS EXCUSED

[4.25pm]

THE COMMISSIONER: Mr Strickland, do you have any other witnesses?

20

MR STRICKLAND: No other witnesses today.

THE COMMISSIONER: Yes. The Commission will adjourn till 10.00am Monday. No, no, sorry, Monday, Monday week.

AT 4.25pm THE MATTER WAS ADJOURNED ACCORDINGLY

[4.25pm]